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HOUSE BILL NO. 1438

Offered January 17, 2006

A BILL to amend and reenact § 15.2-2286 of the Code of Virginia, relating to permitted provisions in zoning ordinances; penalties.

Patrons—Sickles, Amundson, Bulova, Hull, Marsden and Watts

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2286 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.

2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307. Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of

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59 the request for modification, and an opportunity to respond to the request within 21 days of the date of
60 the notice. The zoning administrator shall make a decision on the application for modification and issue
61 a written decision with a copy provided to the applicant and any adjoining landowner who responded in
62 writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall
63 constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning
64 appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the
65 circuit court as provided by § 15.2-2314.

66 The zoning administrator shall respond within 90 days of a request for a decision or determination
67 on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

68 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any
69 such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000,
70 *except that in the case of a violation of limitations on occupancy of a residential dwelling unit, the*
71 *zoning ordinance may provide that any such violation shall be a Class 1 misdemeanor punishable by a*
72 *fine of not less than \$10 nor more than \$2,500 and confinement in jail for not more than 12 months,*
73 *either or both, and that each day of such violation shall constitute a separate offense.* If the violation is
74 uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the
75 violation in compliance with the zoning ordinance, within a time period established by the court. Failure
76 to remove or abate a zoning violation within the specified time period shall constitute a separate
77 misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any such
78 failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each
79 10-day period punishable by a fine of not less than \$100 nor more than \$1,500. *In the case of a failure*
80 *to remove or abate a violation of residential occupancy limitations within the time period established by*
81 *the court, where the zoning ordinance provides for a penalty for any such violation that includes*
82 *confinement in jail for not more than 12 months, then in addition to imposing fines for each succeeding*
83 *10-day period that the violation continues, the court may also order the violator to be confined in jail*
84 *for not more than 12 months.*

85 6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of
86 notices and other expenses incident to the administration of a zoning ordinance or to the filing or
87 processing of any appeal or amendment thereto.

88 7. For the amendment of the regulations or district maps from time to time, or for their repeal.
89 Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the
90 governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or
91 classifications of property. Any such amendment may be initiated (i) by resolution of the governing
92 body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract
93 purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the
94 subject of the proposed zoning map amendment, addressed to the governing body or the local planning
95 commission, who shall forward such petition to the governing body; however, the ordinance may
96 provide for the consideration of proposed amendments only at specified intervals of time, and may
97 further provide that substantially the same petition will not be reconsidered within a specific period, not
98 exceeding one year. Any such resolution or motion by such governing body or commission proposing
99 the rezoning shall state the above public purposes therefor.

100 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for
101 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such
102 reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or
103 consents to action beyond such period or unless the applicant withdraws his motion, resolution or
104 petition for amendment to the zoning ordinance or map, or both. In the event of and upon such
105 withdrawal, processing of the motion, resolution or petition shall cease without further action as
106 otherwise would be required by this subdivision.

107 8. For the submission and approval of a plan of development prior to the issuance of building
108 permits to assure compliance with regulations contained in such zoning ordinance.

109 9. For areas and districts designated for mixed use developments or planned unit developments as
110 defined in § 15.2-2201.

111 10. For the administration of incentive zoning as defined in § 15.2-2201.

112 11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that
113 would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange
114 for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the
115 higher zoning classification. The locality may establish reasonable guidelines for determining the amount
116 of excess real estate tax collected and the method and duration for applying the tax credit. For purposes
117 of this section, "downzoning" means a zoning action by a locality that results in a reduction in a
118 formerly permitted land use intensity or density.

119 12. Provisions for the clustering of single-family dwellings so as to preserve open space.

120 a. A locality may, at its option, provide in its zoning or subdivision ordinance standards, conditions

and criteria for clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space and compliance with its comprehensive plan and land use ordinances. The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality determines, at its option, to provide for clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different zoning area within the locality.

If proposals for clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt developments of two acres or less from the provisions of this subdivision.

b. Additionally, in any zoning or subdivision ordinance adopted pursuant to subdivision A 12, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide in its zoning or subdivision ordinance standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions and criteria, it shall be permitted by right and approved administratively by the locality staff in the same manner provided in subdivision A 12 a, or (ii) approve the increased density development upon approval of a special exception, special use permit, conditional use permit or rezoning.

c. Any locality that provides for clustering of single-family dwellings and preservation of open space upon approval of a special exception, special use permit, conditional use permit or rezoning shall no later than July 1, 2004, amend its applicable land use ordinance to comply with the provisions of subdivision A 12. Any land use provisions for clustering of single-family dwellings and preservation of open space adopted after the effective date of this act shall comply with subdivision A 12. Notwithstanding any of the requirements of subdivision A 12 to the contrary, any local government land use ordinance in affect as of January 1, 2002, that provides for the clustering of single-family dwellings and preservation of open space development by right without requiring either a special exception, special use permit, conditional use permit or other discretionary approval may remain in effect at the option of the locality.

B. Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been properly assessed against the subject property have been paid.